

CONTROLLING ABSENTEEISM AND TARDINESS IN STATE GOVERNMENT

MANAGEMENT IN STATE GOVERNMENT

**Participant's Manual
Comprehensive Public Training Program (CPTP)
State of Louisiana**

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CONTROLLING ABSENTEEISM AND TARDINESS **IN STATE GOVERNMENT**

MANAGEMENT IN STATE GOVERNMENT

Comprehensive Public Training Program (CPTP)

**Sponsored by the Governor's Office, Division of Administration
& the Department of State Civil Service**

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CONTROLLING ABSENTEEISM AND TARDINESS IN STATE GOVERNMENT

Course Description

This course discusses practical supervisory techniques for controlling absenteeism and tardiness in state government and why these need to be controlled. The class will work with common problematical situations. The material will provide a sample doctor's certificate, a calendar to track absenteeism and tardiness, and sample letters of counseling. These letters will contain various examples of accountability measures that can be taken with employees who have absenteeism and tardiness problems.

Learning Outcomes

- Principles of wise leave management.
- How to manage different types of leave, especially annual and sick leave. Includes learning what rights and responsibilities state employees and supervisors have (and do not have) in using and approving leave.
- Legal requirements, under Civil Service rules and federal law, to manage leave, including an overview of the Family and Medical Leave Act (FMLA).
- How absenteeism and tardiness can affect PPR ratings and merit increases.
- How to effectively counsel employees and require accountability measures for better attendance.
- What kinds of counseling letters may be issued to manage frequent absenteeism or tardiness.
- What kind of doctor's certificate can be required for sick leave.

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*Note: The Civil Service Rules may
be found on the Internet:
www.civilservice.louisiana.gov*



BRAINSTORMING SESSION

Some state supervisors and agencies encounter regular problems with absenteeism and tardiness. List some of these problems. You may consider different working environments that have different missions in state government.

1.

2.

3.

4.

5.

6.

7.

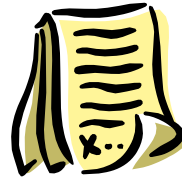
8.

Class discussion notes:

Absenteeism and Tardiness Affect:

PPR ratings

- PPR ratings should reflect absenteeism and tardiness problems during the employee's rating period.
- The factor of "Dependability" is defined as "being where he or she should be and doing what he or she is supposed to do." When frequently absent or tardy, the employee may be rated "Needs Improvement" or "Poor" in this factor.
- "Work Product," defined as "the quality and quantity of work produced by the employee," may be affected because work deadlines are not met, etc.



Merit increases

- Merit increases are discretionary with the appointing authority.
- It is a myth that state employees should be given automatic merit increases. They should be deserved and are NOT a guaranteed right.
- It is NOT a disciplinary action to withhold or postpone a merit increase.
- Employees have limited appeal rights to Civil Service if the increase is withheld. Generally, they must allege and PROVE illegal discrimination based on race, sex, religious beliefs or political beliefs.
- Even if the employee has an overall PPR rating of "Meets Requirements" or higher, an increase does not have to be given if the employee is frequently absent or tardy.
- Withholding an increase may be an effective incentive for the employee to improve or leave the job.

FMLA

*Consult your HR Office
about FMLA. This is an
overview.*

What you need to know

- The Family and Medical Leave Act (FMLA) is a federal law to which eligible state employees are subject.
- Check web site for details
www.dol.gov/dol/esa/public/regs/compliance/whd/1421.htm
- Eligible employees must be given what is needed, up to 12 work weeks of job-protected leave, during a 12-month period.
- FMLA guarantees the protection of an employee's job and benefits for the FMLA period; it is not a separate "pot" of leave.
- For state employees, accrued, appropriate paid leave may be used for FMLA. Many agencies have policies requiring the use of the appropriate leave type. If the employee runs out of appropriate paid leave, leave without pay makes up the rest.

Who is eligible to use FMLA leave?

- Those who have worked for the state for a total of at least 12 months,
AND
- Who have actually worked (leave does not count) for at least 1,250 hours during the 12 months prior to beginning FMLA leave.

Reasons for which FMLA leave may be taken:

- Birth of a child, and to care for the newborn child.
- Placement of a child for adoption/foster care to care for the child.
- Care of immediate family member (spouse, child, parent) who has a serious health condition as defined by FMLA.
- For the employee's own serious health condition. The agency may require certification of the condition.

Note: For more information, see Appendix C on page 41.

WISE LEAVE MANAGEMENT

- Consider the greater good of all your employees and your customers.
 - Disruptive absenteeism should not be accepted or enabled.
 - Morale and workload problems result from absences.
 - Consider the rights and welfare of co-workers and customers, as well as those of the absent employee.
- Lead by example. Model what you want demonstrated.
- Be reasonable. Take action based on rational business reasons. Don't "play favorites."
- If you wish to change your method of managing leave, do the following:
 - First, get the support of your chain of command and your Human Resources office. If you act alone, you may not be supported and that would undermine your authority and credibility.
 - If you "tighten up" on the management of leave, let your employees know the new rules **before** you hold them accountable for them.
- All employees do NOT need to be dealt with in the same manner.
 - It is a myth that everyone has to be treated the same. Different measures can be used for the frequently absent employee.
 - Good attendees do NOT have to have the same management tools applied to them as are applied to those frequently absent. Don't punish the good for the behavior of the bad. This is harmful to morale and basically unfair.
 - Never illegally discriminate against employees based on race, sex, religion, etc.
 - Try to counsel employees individually and in private.

CONSIDER THE GREATER GOOD!



ANNUAL LEAVE
(See Rules 11.5 – 11.10)



- Annual leave is used for vacation and personal business.
- The agency chooses the minimum charge to leave (from 6-30 minutes) which applies to both annual and sick leave.
- The Standard Form 6 (the leave slip) is used by employees to apply for leave.
- Annual leave can be denied by the appointing authority. Such authority is usually delegated to the supervisor.
- Never discriminate based on race, sex, religious, or political beliefs.
- The supervisor can deny and manage leave based on rational business reasons. Tell employees to give as much advance notice of requests for annual leave as possible.
- Technically, there is no such thing as an abuse of annual leave, because it cannot be used without approval.
- By approving leave, the supervisor is saying, in effect, that he does not oppose use of the leave.
- Employees do not have the right to use annual leave whenever they wish (subject to FMLA).

- The needs of the agency and those it serves should always be considered.
- All employees do not have to be treated the same. Try to avoid blanket policies that punish good employees.
- Attendance problems should normally be handled by the supervisor as follows:
 - Before you act, get the support of your chain of command and Human Resources.
 - Discuss problems being caused; advantages of change/action; and drawbacks of inaction.
 - Address it privately with the person having the problem; however, when possible, have a second support person with you - usually your supervisor or a member of the Human Resources staff.
 - Show the employee his leave record, because it is difficult to argue with facts.
 - Give him a written statement of the points that were verbally communicated to him in the counseling session.
- When needed for use under the Family and Medical Leave Act, annual leave cannot be denied. However, if FMLA is for the employee's own serious health condition, the use of accrued sick leave should be required first.



Annual Leave Questions

1. What are some common myths regarding annual leave?
 - a.
 - b.
 - c.
2. From whom should you seek support before you change your methods of managing leave or tardiness?
 - a.
 - b.
3. How could you go about influencing your chain of the need to manage leave differently or to address an individual absenteeism problem?
 - a.
 - b.
 - c.
4. May a supervisor manage leave differently for different employees? Why?
5. During a counseling session on leave problems, what can the supervisor do to stress the seriousness of the issue and to be sure the employee understands what he is told?
 - a.
 - b.
 - c.
6. Is it wise for a supervisor to tell an employee who has been using a great deal of leave that he will not be allowed to use any more leave, under any circumstances, for the next x of months? Why?

How would you handle these situations?

1. Several of your employees ask for annual leave for the same day. You cannot allow all of them to take leave due to staffing needs. What actions/questions might help you determine whom you will permit to take the leave?
 - a.
 - b.
 - c.
 - d.

2. One of your employees calls in at the beginning of business and tells a co-worker (not you) that he won't be coming in today (or he'll be in as soon as possible) because he has some personal business. After hanging up, the co-worker e-mails you of this. You do not wish to approve the absence of the employee because he frequently calls in for this type of unscheduled absence and the absences are causing morale problems; however, you have never counseled the employee on this issue. What actions might you take?
 - a.
 - b.
 - c.

3. You have an employee who often calls in the morning with a variety of last-minute needs. Today he says he has a flat tire. The caller usually says that he will be in later if he can. Sometimes he comes in and sometimes he does not. You have counseled the employee regarding this.
 - a. Would it be acceptable to tell him that you will approve leave for only two hours because that should be sufficient time to get the tire fixed?
 - b. Under what circumstances would you consider denying the leave altogether?
 - c. If you deny the request for annual leave and direct the employee to report immediately to work, in what status is the employee until he returns to work? _____ Is this a disciplinary action? Why?
4. You are in a counseling session with your only employee who is frequently absent, especially due to unscheduled call-ins at the beginning of business. You inform him that you are placing him on a supervisory plan to monitor and control his leave usage. The employee responds to this by accusing you of discriminating against him. What are some appropriate ways you could respond to this, depending on the circumstances?
 - a.
 - b.
 - c.

Sample Memo or Letter of Improvement

Note: This sample memo addresses only annual leave absences. It does not address sick leave absences. See a sample memo for sick leave absences under the topic of "Sick Leave." When necessary, you may combine the samples in one memo.

To: Employee
From: Supervisor
Date: January 10, 2009

This will confirm our conversation today regarding your attendance. Your rate of absenteeism over the past six months has been about 10% of your work hours, or about one day every two weeks, on average. While there are other employees with a similar rate of absenteeism, their absences have been planned in advance and/or they have had health problems. In contrast, you have had frequent, unscheduled "call-in" absences, which have made up most of your absenteeism.

The position you occupy is very important to the smooth operation of this office. The frequency of your absences has been disruptive to this office. It is difficult for the other employees to perform their assigned duties when they have to perform some of your duties, especially since most of your absences have not been scheduled in advance. It is my duty to do what I can to ensure that the work of this office is performed with as little disruption as possible. We must be able to count on your presence at work on a regular basis.

In order to minimize the disruption these absences create, it is necessary that you make an effort to schedule your absences and reduce your absenteeism. At this point, I regret that I must impose the following conditions on your leave use:

1. Beginning immediately, you must have prior approval for annual leave before such leave will be approved. Prior approval means that you must have a leave slip approved by me at least two (2) work days in advance. Such leave requests will be approved in the interest of this office and only if I think that your scheduled absence will not adversely impact your work. No approval for annual leave will be given for requests that do not meet this notice requirement, unless it is judged by me to be a situation

for which I decide to approve leave or unless the absence is covered by the Family and Medical Leave Act.

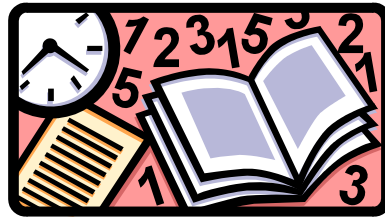
2. For events that result in a "call-in" situation, leave without pay will be approved if the following conditions are met:
 - a) You must speak to me at the beginning of your workday, or, if I am not in the office, you must speak to _____. If you are not able to reach either of us, then you must leave a phone number where you can be reached. If you will not be able to be reached by phone, then you must call in at least once every hour until you are able to speak to me or to _____. Failure to speak to one of us will result in your being placed on unauthorized leave without pay for the absence.
 - b) Be advised that approval may be granted for only a portion of the day, rather than for the entire day, if it appears circumstances warrant an absence of only part of a day. If leave without pay is approved for only a portion of the day, then you must either report to work by the stated time, or you must call in again with an explanation to request additional leave. Failure to do so will result in your being placed on unauthorized leave without pay for the remainder of the day.

If this department does not think that you have complied adequately with the provisions of this notice, it will take appropriate action, including possible disciplinary action. You are directed to follow the above instructions. If you have any questions regarding the above restrictions, please let me know immediately. Again, I regret that I must impose these measures. In three months, I will review this situation and decide if these measures should be continued.

This memo is not a disciplinary action. A copy of it will be placed in the supervisory file that I maintain on you. A copy will not be placed in your official personnel record that is accessible to the public. You may submit to me a written response to this memo. Your response will be attached to the copy of the memo that has been placed in the supervisory file. Your response should be given to me by January 17, 2009.

cc: Supervisory file

COMPENSATORY LEAVE **CHAPTER 21 RULES**



1. An agency has the right to require an employee to work overtime. (Rule 21.1)
2. An agency may pay employees for overtime work or credit them with compensatory leave (also known as "comp time" or "k-time"). The agency will set the policy by which overtime is compensated (pay or compensatory leave).
3. Compensatory leave is managed in much the same way as annual leave, in that it must be approved in order to be taken. The difference is that the agency may require the employee to use compensatory leave at any time, including using it before use of annual leave, except when the employee wants to use accrued, legitimate sick leave for his own illness, disability, medical treatment or appointment.
4. Non-exempt Civil Service employees are subject to the federal Fair Labor Standards Act (FLSA) which states that employees shall be allowed to use compensatory leave earned at the time and one-half rate within a reasonable period of time.
5. Compensatory leave earned at the time and one-half rate **cannot** be applied to the employee's Family and Medical Leave (FMLA) entitlement. An agency cannot require an employee to substitute such leave for unpaid FMLA leave. If the agency permits the employee to use such leave for an FMLA reason, such leave may not be counted against the employee's FMLA leave entitlement. See FMLA regulation 29 CFR 825.207(i).
6. Provisions addressing payment for compensatory leave upon separation or transfer are found in Civil Service Rule 21.12. Rule 21.11 addresses the carry over and/or payment of compensatory leave earned at the hour for hour rate from one calendar year to the next. These rules can be seen on the Civil Service web site: www.civilservice.louisiana.gov

SICK LEAVE
(See Rules 11.13 – 11.14)



- Sick leave is used for one's own disability, sickness, consultation, or treatment.
- The agency chooses the minimum charge to leave (6-30 minutes) which applies to both annual and sick leave.
- The Standard Form 6 (the leave slip) is used to apply for leave.
- The employee must be allowed to use sick leave if it is accrued and legitimate.
 - Subject to Rule 12.6(a),
 - Subject to acceptable proof of legitimacy, as determined by the agency.
- Advance approval is not required, although it certainly may be generally required for doctors' appointments.
 - Verification of legitimacy, e.g., doctors' statements, etc., can be required at any time under the Civil Service rules.
 - It is advisable to first check with the Human Resources Office concerning any agency policy that might exist in this regard.
 - An employee does not have a right to take sick leave just because he has earned it. Its use must be legitimate, or it is leave abuse.

Note: If it is FMLA leave for a medical condition, the agency should normally request re-certification no more often than every 30 days. Check with your Human Resources Office if this situation is applicable.

- Subject to the Family and Medical Leave Act (FMLA), the agency does not have to approve annual leave for sick leave purposes. If the employee runs out of sick leave, he may be required to use leave without

pay. Consult your agency's Human Resources office to determine what your agency's policy is in this regard.

- It is not illegal discrimination to require doctors' certificates only from those who often take leave or those you suspect of leave abuse.
 - It may hurt morale to require it from employees who have good leave records.
 - The agency can require that advance notice generally be given for non-emergency doctors' appointments and that the employee try to schedule them to minimize time away from work, (for example, before 10:00 a.m. or after 3:00 p.m.)
- The following may be required regarding the medical statement. It is not necessary to accept, without question, a physician's statement that looks inadequate or strange.
 - The doctor's certificate should be an original signed by the treating physician. Copies, stamped signatures, or signatures of a receptionist need not be accepted.
 - The time and date the employee was seen by the doctor.
 - A statement that the employee is unable to perform the essential functions of his job.
 - The probable date the employee will be able to return to work.
 - The statement must be submitted directly to the supervisor (or his designee) by the employee immediately upon his return to work or within a reasonable time as determined by the supervisor.
- The agency may enforce the use of sick leave if the employee asserts the absence is due to illness or injury (Civil Service Rule 11.13.1).
- The employee has the right, if he chooses, to use accrued, legitimate sick leave rather than being required to take compensatory leave for sick leave purposes.
- An employee can **never** use sick leave for any reason other than his own health condition or medical treatment.
- If the employee fails to adhere to absence guidelines after being informed that they will be applied to him, he may be disciplined.

Removal From State Service Due to Absence From Work

Civil Service Rules 12.6(a) 1 and 2 permit an agency to **non-disciplinarily** remove employees for certain absences. The rule provides:

12.6 Non-disciplinary Removals.

(a) An employee may be non-disciplinarily removed under the following circumstances:

1. When, on the date the notice required by Rule 12.7 is mailed, hand delivered, or orally given, the employee is unable to perform the essential functions of his job due to illness or medical disability and has fewer than eight hours of sick leave. An employee removed under this provision shall be paid for all remaining sick leave.
2. When, after the employee has been given written notice that his attendance requires improvement and a copy of this rule, an employee has seven or more unscheduled absences during any consecutive twenty-six week period. The employee shall also be given written notice each time he incurs a sixth unscheduled absence during a consecutive twenty-six week period. An unscheduled absence occurs when an employee is absent from work without having obtained approved leave prior to the absence. Approval of leave, after the fact, to cover an unscheduled absence shall not prevent the absence from being considered unscheduled. A continuous absence for the same reason is one unscheduled absence, regardless of its duration.

Points to Remember for Rules 12.6(a)1 and 2:

1. All agencies may use this rule.
2. Rule 12.6(a)1 **cannot** be used until after the employee has exhausted FMLA eligibility.
3. Rule 12.6(a)1 can be used **only** if the employee cannot return to work with or without reasonable accommodations.
4. FMLA absences **cannot** be counted for purposes of Rule 12.6(a)2.
5. Leave policy variances that are approved as ADA or state law accommodations **cannot** be counted for purposes of Rule 12.6(a)2.
6. An unscheduled absence is one that the employee did not obtain approved leave in accordance with the agency's procedures before the absence.
7. Rule 11.27(g) allows an agency to place an employee on leave without pay for an unapproved absence. An absence is unapproved if the employee did not follow agency policy for obtaining approved leave.

8. In addition to imposing leave without pay, an agency may discipline an employee for failing to follow attendance and leave policies.

9. If the agency chooses to, it may approve leave after-the-fact so the employee can be paid for the time he or she was out, but the absence can still be considered unscheduled.

ABSENTEE CALENDAR

20____

- ☐ Tardiness
- ☐ UA (Unsched. annual)
- ☐ UB (Unsched. sick)

- ☐ UK (Unsched. K-time)
- ☐ UL (Unsched. leave w/o pay)

Name_____

JANUARY

S	M	T	W	T	F	S

FEBRUARY

S	M	T	W	T	F	S

MARCH

S	M	T	W	T	F	S

APRIL

S	M	T	W	T	F	S

MAY

S	M	T	W	T	F	S

JUNE

S	M	T	W	T	F	S

JULY

S	M	T	W	T	F	S

AUGUST

S	M	T	W	T	F	S

SEPTEMBER

S	M	T	W	T	F	S

OCTOBER

S	M	T	W	T	F	S

NOVEMBER

S	M	T	W	T	F	S

DECEMBER

S	M	T	W	T	F	S

Frequent Questions Concerning Sick Leave

1. Can I tell employees that they should try not to schedule routine, non-emergency doctors' appointments during our busy season?

Answer: Yes, but this should be done before the busy season begins to give them some time to schedule the routine appointments before the season. Obviously, we are talking here about a busy season that does not last a long time. Be reasonable.

2. Can I telephone the doctor's office to confirm that the employee actually had an appointment?

Answer: Nothing prohibits you from contacting the doctor's office; however, this information will not be given to you. It is a better practice to inform the employee that he must have the doctor fill out this certification in writing and let the employee get this back to you.

3. Can I send home an employee who obviously has a contagious disease, such as the flu?

Answer: Yes. The manager may tell the employee that he cannot work and may take sick leave, but if he does not, he will be on leave without pay. OR, the manager may force annual leave, if desired (if it does not force the employee's annual leave balance to be reduced below 240 hours, in accordance with Civil Service Rule 11.9). Another alternative is to place the employee on suspension pending investigation (a form of paid leave, not a disciplinary action), and require the employee to obtain a doctor's certificate that his condition is not dangerous and/or contagious to others.

4. If I have an employee who has a condition covered under the Americans with Disabilities Act, and his medication sometimes leads to his having to sleep (or being too drowsy to work) for a few hours on the job, do I have to permit this as a reasonable accommodation?

Answer: Only the agency can make the determination as to what is reasonable. It may or may not be reasonable, given individual circumstances, such as frequency, etc.

Questions and Situations Involving Sick Leave

Factual Questions:

1. What are some common myths in state government concerning sick leave?
 - a.
 - b.
 - c.
2. May a supervisor **normally** deny use of accrued, legitimate sick leave? What circumstances would permit such leave to be denied?
3. May a supervisor allow an employee to use his sick leave for Family and Medical Leave (FMLA) to care for an immediate family member who has a serious health condition? _____ To adopt a child? _____ Why?
4. May an agency separate an employee who has exhausted sick leave after being out for seven weeks of FMLA leave but still needs more time to recuperate? _____ Why?

5. What advantages and disadvantages do you see in applying a blanket policy that says every employee who is out for sick leave for over three days must bring in a doctor's statement?

Advantages:

- a.
- b.

Disadvantages:

- a.
- b.

Situational Questions:

1. One of your employees frequently calls in at the beginning of the day to say he's not feeling well. He leaves his messages with co-workers. You do not know if he's really sick each time or not. His frequent absences are causing resentment among his co-workers. What actions would you take?
- a.
 - b.
 - c.
 - d.
 - e.

2. What would you do if an employee, after being required to bring in a doctor's certificate for each absence, brings in a standard form with the doctor's name stamped on it (or it otherwise looks suspicious to you)?

3. An employee gets obviously sick on the job. He proceeds to fill out a leave slip for sick leave but is told he must first use his accumulated compensatory leave. However, he states his wish to use his sick leave. What must the agency do?

4. An employee has been instructed by the supervisor to bring in a doctor's statement each time he is out for sick leave. Upon his return he fails to produce it and says he couldn't get in to see the doctor. What may the agency do?
 - a.
 - b.

5. A long-term employee with a very good leave record tells you that he will have to go for shots twice a week for the next three months. Another of your employees has been put on a supervisory plan due to his frequent, largely unscheduled absenteeism. He tells you that he thinks his co-worker who needs the shots should have to bring in a doctor's statement each time he gets a shot, since you are requiring him to do so for each absence. He says you are discriminating against him. What would you do?

Sample Memo or Letter of Improvement

Note: This sample addresses only sick leave absences. It does not address annual leave absences. See a sample notice for annual leave absences under the topic of "Annual Leave." If appropriate, combine these in one memo.

To: Employee
From: Supervisor
Date: January 10, 2009

This will confirm our conversation today regarding your attendance. Your average absence rate for the past x number of months, has been approximately 10% of your work hours, or, on average, about one day every two weeks. While there are other employees with a similar rate of absenteeism, their absences are planned in advance and/or have been for extended periods, rather than frequent, unscheduled "call-in" absences which make up most of your absenteeism.

The position you occupy is very important to the smooth operation of this office. The frequency of your absences has been disruptive to this office. It is difficult for the other employees to perform their assigned duties when they are trying to fill in during your absences, especially since most of your absences have not been scheduled in advance. (Or you may state that the employee's work deadlines are not being met, etc. - whatever circumstances apply to the case). It is my duty to do what I can to ensure that the work of this office is performed with as little disruption and as efficiently as possible. We must be able to count on your presence at work on a regular basis.

In order to minimize the disruption these absences create, it is necessary that you make an effort to schedule your absences and reduce your absenteeism. At this point, I regret that I must impose, beginning immediately, the following conditions on your leave use. Your time and attendance will be monitored accordingly.

1. You must request leave for any non-emergency medical appointments at least two work days in advance. You are instructed to try your best to schedule these appointments prior to 10:00 a.m. or after 3:00 p.m., in order to minimize your absence from work.

2. You are required, each time you ask for sick leave, to get a doctor's certificate. (Unless it is FMLA leave for a medical condition. In this case, the agency should request re-certification no more often than every 30 days. Check with your Human Resources Office if this is the situation.) **A copy of the form that the doctor is to complete each time is attached.**
3. You must submit the doctor's statement directly to _____ (you or your designee) by _____ (within a period the supervisor thinks is reasonable, including immediately upon the employee's return to work). Failure to do this will result in: a) leave without pay for that period; and b) possible disciplinary action for failure to comply with my direct order.
4. For unscheduled absences due to your own illness, you are to personally telephone me, or in my absence, (your designee), at the beginning of your workday. If neither of us is available at that moment, you are to leave a message stating the time you called and stating that neither of us was available to speak to you.
5. Your failure to call in timely, produce acceptable proof and/or justify the need for an absence will result in your being placed on leave without pay for the duration of your absence.
6. Additionally, your failure to call in timely, produce acceptable proof and/or justify your need for an absence may subject you to possible disciplinary action.

If you have any questions regarding the above restrictions, please let me know immediately. Again, I regret that I must impose these measures. In three months, I will review this situation and decide if these measures will continue.

This memo is **not** a disciplinary action. A copy of it will be placed in the supervisory file that I maintain on you. A copy will not be placed in your official personnel record that is accessible to the public. You may submit to me a written response to this memo. Your response will be attached to the copy of the memo that has been placed in the supervisory file. Your response should be given to me by January 17, 2009.

Attachment: Form to be completed by the doctor.

cc: Supervisory file

Sample Form Letter to Serve as Doctor's Certification

(Adapt this for each affected employee and type it on your official agency stationery.)

Date

Dear Doctor _____:

Your patient, Jane Doe, is an employee of ours and we are seeking certain information regarding her condition that you are treating. She works as a clerical employee in an office setting. Her typical tasks are listed below and we would ask that you indicate whether she can now perform each task.

	Yes	No
Sitting in a chair at a desk	_____	_____
Typing and answering telephone	_____	_____
Standing, sitting, and kneeling to file.....	_____	_____
Lifting more than 5 pounds.....	_____	_____
Climbing 2 flights of stairs.....	_____	_____

For each negative indication, would you please advise how long you expect that the task cannot be performed, and for each task please indicate if there is anything we can do which would allow the task to be performed for an extended or limited period.

Would you please indicate whether the condition for which you are treating Ms. Jane Doe is contagious to others, and if so, how long this contagious condition will last.

Dr. John Doe, M.D. (original signature)

Date

Time of appointment

(continued on next page)

Would you please complete the above information, sign where indicated, and return this completed letter to your patient, who, in turn, will return it to us. We very much appreciate your cooperation.

Sincerely,

The supervisor's name

To our employee:

This is to authorize us to receive the health information requested and to limit what we may do with the information. Please deliver this to the identified health care provider along with the letter dated _____. Return the completed letter to us.

AUTHORIZATION

I, _____, hereby authorize _____ to provide the information requested in the letter dated _____ and signed by _____. This information may be released to the individual who signed that letter for purposes of evaluating my fitness for employment. I understand that my employer may share this information with others on a need to know basis for that purpose. I further understand that I have the right to revoke this authorization in writing given to the above named health care provider. If that health care provider has already taken action in reliance upon this authorization, I may not do that revocation to the extent of such action. This authorization is a one-time authorization for use only to respond to the letter identified above and will expire upon such response. I further understand that if I revoke this authorization before the requested information is delivered, the rights available to me through my employment could possibly be denied to me.

Employee

Date

LEAVE WITHOUT PAY AND TARDINESS

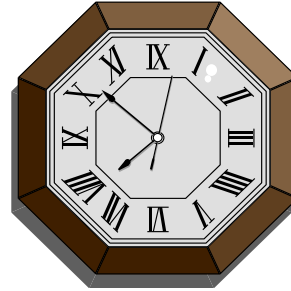
Authorized leave without pay:

1. The agency may grant authorized leave without pay, generally when the employee has exhausted appropriate paid leave. This can be granted in 6-minute increments.
2. Like annual leave, the agency is not required to approve such leave unless it is for legitimate FMLA use. (Example: An employee needs 12 weeks of FMLA leave for open-heart surgery and recuperation. He has only 80 hours of sick leave which is used first, and 40 hours of annual leave which is used next. This leaves 9 weeks of FMLA need, which would be authorized leave without pay).
3. Leave slips are submitted for approval of such leave.

Unauthorized leave without pay:

1. This leave is used to cover periods of unauthorized absence, such as tardiness and other unapproved absences, including leaving work early, and taking longer than authorized breaks or lunches.
2. No leave slip is submitted as a request for leave by the employee, as this leave is not requested, but rather imposed. However, if the supervisor is documenting occurrences of tardiness and withholding pay for these periods, i.e., unauthorized leave without pay, he may attach leave slips for the period(s) of tardiness to the bi-weekly time and attendance sheet and sign them as the documentation of the actual periods of tardiness and the dates involved.

Tardiness



1. Employees need to understand the importance of reporting to work on time. Co-workers have to cover for employees who are tardy. This hurts morale and productivity and establishes a double standard of conduct where some people don't have to get to work on time and some do.
2. There is no such thing as a “grace period” for reporting to work!
3. Employees should be “duty-ready” at the beginning of business. This does not include being in the parking lot, etc.
4. Problematical tardiness should not be covered with approved annual leave. This may give the appearance of condoning such behavior and may have the effect of enabling it to continue.
5. Address tardiness problems immediately. Ask the tardy employee to explain his behavior and identify steps that can be taken to correct it. Otherwise the employee may fall into a pattern of what he thinks is acceptable behavior.
6. You may place the tardy employee on leave without pay for the actual period(s) of time he is late. This is not a disciplinary action; it merely reflects that the employee was absent without permission. Keep this documentation - it could lead to disciplinary action. If you do this, add up all such leave without pay during the pay period and withhold salary accordingly.

Tardiness - continued

7. An agency may use minimum increments of 6 minutes when totaling periods of leave without pay, even if the agency's minimum increment for annual and sick leave is more than 6 minutes. For each occurrence of tardiness, you may round to the nearest 6 minutes. For example, if the employee is 10 minutes late, you may count it as 12 minutes.
8. One method of documenting this for the time and attendance sheet is for the supervisor to use SF-6 Forms (leave slips) to indicate the actual dates and periods of tardiness. The supervisor should sign these and attach them to the bi-weekly time and attendance sheet for documentation for actual periods of absence and as the basis for the amount of pay to be withheld from the employee.
9. If you choose not to place the employee on leave without pay for tardiness, at least keep a record of the dates and actual periods of tardiness so that you can use this documentation for counseling and/or disciplinary action.



Questions and Situations Involving Leave Without Pay

1. A supervisor has had no problems with her employees regarding breaks and lunches, but she knows that some other units are abusing the time limits for these. She decides that in order to keep this from occurring in her unit, she will start requiring her employees to sign in and out for breaks and lunch periods. What do you think of this action? Why?

2. A supervisor has counseled an employee for frequent tardiness and has notified him that until further notice, he must sign in with the supervisor immediately upon getting to work, writing down the exact time he got to work that day. The employee complains that it is discrimination to require him to sign in and not his co-workers. None of his co-workers have a problem getting to work on time. How could the supervisor respond to the discrimination accusation?

3. An employee takes longer than authorized lunch periods (or breaks), which is causing resentment among the co-workers. What are some actions the supervisor could take?

4. An employee has been leaving work 15 minutes early. You talk to him about this and he states he saves his break until the last 15 minutes of work. What should you do in this case?

Sample Memo or Letter of Improvement

To: Employee
From: Supervisor
Date: January 10, 2009

This will confirm our conversation today regarding your tardiness in reporting to work. I have discussed this issue with you before, but unfortunately, your tardiness has not improved. I cannot permit such tardiness to continue because it hurts the morale and productivity of this office. Regretfully, I now find it necessary to monitor the time you report to work each day. Therefore, effectively immediately, your reporting to work will be recorded as follows:

Each day, immediately upon your reporting to work, you must sign in with me and note the exact time of your arrival. There will be a paper for this purpose that will be kept on my desk. In my absence, you are to do this with (your designated backup).

-- Choose one of the following two paragraphs --

For any period(s) of tardiness, you will be placed on unauthorized leave without pay, which is not a disciplinary action. Such leave without pay simply reflects that you were not authorized to be away from work. If the tardiness continues, you may be subject to disciplinary action, in addition to the leave without pay.

OR

For any period(s) of tardiness, you may be placed on unauthorized leave without pay, which is not a disciplinary action. Such leave without pay simply reflects that you were not authorized to be away from work. Whether or not you are placed on leave without pay for these periods, I will keep a record of your tardiness, which may, if it continues, subject you to disciplinary action.

If you have any questions regarding these instructions, please let me know immediately. Again, I regret that I must impose these measures. In three months, I will review this situation and decide if these measures need to continue.

This memo is not a disciplinary action. A copy of it will be placed in the supervisory file that I maintain on you. A copy will not be placed in your official personnel record that is accessible to the public. You may submit to me a written response to this memo. Your response will be attached to the copy of the memo that has been placed in the supervisory file. Your response should be given to me by January 17, 2009.

cc: Supervisory file

APPENDIX A

LEAVE EARNING RATES (ACCRUAL RATES)

<u>Years of service</u>	<u>Rate earned per paid hr.</u>	<u>Days per year</u>
0-3	.0461	12
3-5	.0576	15
5-10	.0692	18
10-15	.0807	21
15+	.0923	24

Note: Prorate for regular, part-time employees. Leave is not earned by intermittent employees (WAE – when actually employed) who have no regular schedule of work.

LEAVE SLIPS

Below is a copy of the SF-6 used for leave requests and approval. The supervisor must decide whether or not to approve the leave request. Annual leave (except that used for FMLA) can be denied. Supervisors should not automatically approve all requests.

APPLICATION FOR LEAVE <small>SF-6 (R 2-01)</small>		AGENCY _____	
Employee Name _____		I request _____ hours of leave.	From: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM To: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM / / / /
Chargeable Leave Request <input type="checkbox"/> Annual <input type="checkbox"/> Straight Compensatory <input type="checkbox"/> Sick <input type="checkbox"/> Time and One-Half Compensatory		FMLA: <input type="checkbox"/> Self <input type="checkbox"/> LWOP <input type="checkbox"/> Family <input type="checkbox"/> Unpaid	
Non-Chargeable Leave Request <input type="checkbox"/> Funeral <input type="checkbox"/> Jury Duty <input type="checkbox"/> Hazard Duty (law enf) <input type="checkbox"/> Other _____ <small>(Explain in "Comments" Section)</small>		EDUCATIONAL: <input type="checkbox"/> Job Related MILITARY: <input type="checkbox"/> Active <input type="checkbox"/> Training (15 days per year) <input type="checkbox"/> Physical	
Attendance Leave Request <input type="checkbox"/> Conference/Convention <input type="checkbox"/> Other _____ <input type="checkbox"/> Training <small>(Explain in "Comments" Section)</small>		SPECIAL: <input type="checkbox"/> Act of God <input type="checkbox"/> Office Closure <input type="checkbox"/> Civil Air Patrol <input type="checkbox"/> American Red Cross <input type="checkbox"/> Emergency Civilian <input type="checkbox"/> Voting	
CIVIL SERVICE: <input type="checkbox"/> Exam <input type="checkbox"/> Interview			
Comments			
I CERTIFY THAT MY ABSENCE FROM DUTY WAS FOR THE REASON NOTED			
Employee Signature _____		Date _____	Approved by and Title _____

TIME AND ATTENDANCE SHEETS

It is the duty of the appointing authority to have a system for maintaining payroll and attendance records. The appointing authority or his designee (usually the supervisor) has to certify attendance and leave. Employees have to certify their own attendance and leave. Thus, it is the responsibility of both the employee and the supervisor to sign off on correct information on the sheet.

APPENDIX B

VARIOUS TYPES OF SPECIAL, PAID LEAVE

There are several types of special leave covered by Civil Service Rules 11.23; 11.23.1; 11.23.2; 11.23.3; 11.24; 11.26, and 11.34. This course will cover the most common leave situations.

The following rules do not apply to restricted appointees.

1. **Jury duty** [Rule 11.23(a)]

This applies only to time needed for this responsibility, including transportation time back to the agency. If the employee is dismissed from jury duty during his work hours, he reports back to work, unless it is sufficiently near the close of business to be pointless. (Example: The employee is dismissed from jury duty at 3:30 p.m. and has to drive 30 minutes to work, where his work day ends at 4:00 p.m.) An employee does not get an automatic week off for jury duty! The agency may ask for verification of time on jury duty.

2. **Act of God** [Rule 11.23(d)]

This leave is granted only if the agency determines that an employee is prevented from reporting to work due to an act of God, such as flooding, a hurricane, or snow and ice. The decision is up to the appointing authority. He may approve such leave for all employees in a broad affected area or he may judge on a case by case basis if the condition is limited to a small area(s).

3. **Local conditions** [Rule 11.23(g)]

This leave may be given when the appointing authority determines that local conditions make it impractical for his employees to work.

Examples:

- a. It is already 90 degrees when the employees report to work in August and the air conditioner cannot be fixed until the next day. The appointing authority has the discretion to permit the employees to take special leave.

- b. He may approve such leave for one or more employees affected by very localized conditions such as a country bridge being washed out when the employee(s) has no other route by which he can get to work.

4. **Civil Service examination** [Rule 11.23(f)]

This applies to employees participating in a Civil Service exam on a regular workday, or taking a required exam pertinent to the employee's state employment before a state licensing board. Managers should use good judgment in deciding what to do, case by case, as long as they are consistent with decisions within their unit. Discretion may be exercised for employees who frequently ask for such time. They should be questioned and decisions should be based on rational business reasons which balance employees' interest in improving themselves and the manager's interest in getting work done.

5. **Military leave** (Rule 11.26)

A good web site for information on the federal law governing military leave, to which state employees are subject, is: www.dol.gov/dol/vets
Confer with your Human Resources office on this rule.

6. **Educational leave** (Rule 11.24)

Such leave with pay may be granted for a maximum of 30 calendar days (240 hours) in one calendar year if the course to be taken is pertinent to the employee's work. A permanent employee may be granted paid leave for a maximum of 90 calendar days in one calendar year if the agency requires him to take special training. **NOTE:** Even though CPTP training can be counted as work time (a person is not generally placed on educational leave to attend), the employee does not have a right to attend as many such classes as he wishes. The agency determines which training will be attended.

Only probational and permanent status employees may use the following:

7. **Funeral leave** (Rule 11.23.1)

The agency is not required to grant such leave, but if it does, it may last up to a maximum of two workdays for any one occasion (it can be granted for less time). It applies only to the deaths of a parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, current spouse, current mother-in-law, current father-in-law, grandparent and grandchild.

Only permanent status employees may use the following:

8. **Crisis leave pool** (Rule 11.34)

This allows an agency to establish a policy which is subject to approval by the Civil Service Commission to implement and administer a pool of shared annual leave which may be used by employees who cannot work due to a crisis situation and who have insufficient appropriate paid leave to cover the absence needed for the crisis situation. Conditions which must be met in the policy are listed in Rule 11.34. If an agency wants to include its unclassified employees in the leave pool, it must state this in its policy, i.e., that both classified and unclassified employees are participating.

NOTE: Employees' status for **job interviews** is not addressed in the Civil Service rules. Agencies may treat such time as either work time or require employees to take annual leave. In the absence of an agency policy, individual supervisors should have a consistent policy for this situation.

For example, employees could be considered to be in work status for interviews internal to their agencies and be required to take annual leave for interviews with other state agencies. Of course, leave would have to be approved for job interviews for the private sector. Managers should use good judgment in deciding what to do on a case by case basis, as long as they are consistent with their decisions within their unit. Discretion may be exercised for those who frequently ask for such time. They should be questioned, and decisions should be based on rational business reasons that balance the employees' interest in improving themselves and the manager's interest in getting work done.

APPENDIX C

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Note: All state agencies have to abide by FMLA.

1. Where can I learn the basics about FMLA?

Go to the following web site:

www.dol.gov/dol/esa/public/regs/compliance/whd/1421.htm

2. What is FMLA?

The Family and Medical Leave Act was enacted in 1993. It entitles employees who are eligible to use up to 12 workweeks of job-protected leave during a 12-month period. For state employees, appropriate paid leave is used for this entitlement. If the employee runs out of applicable paid leave before his need for the leave expires (up to 12 weeks), he then has the right to use leave without pay to reach the cumulative total of time he needs (up to 12 weeks).

3. Which employees are eligible for FMLA?

Those who meet two conditions:

- a. have worked for the state for at least 12 months (may have been on a previous appointment), and
- b. have actually worked at least 1,250 hours (leave does not count) during the 12 months prior to beginning the FMLA leave.



4. For what reasons may one use FMLA?

a. Birth of a child, and to care for the newborn child

- If both spouses work for the state and use FMLA for this reason, they are limited to a combined total of 12 workweeks.
- Mother may use sick, annual, and straight compensatory leave.
- Father may use annual or straight compensatory leave.
- Employer may force annual leave below 240 accrued hours for FMLA.
- Intermittent/reduced schedule leave may be taken to care for a newborn only with the employer's approval.
- Entitlement expires 12 months after the birth of the child.

b. For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child.

- If both spouses work for the state and use FMLA for this reason, they are limited to a combined total of 12 workweeks
- Either spouse may use annual or compensatory leave (not sick leave)
- Entitlement ends 12 months after placement of the child
- Intermittent/reduced schedule leave to care for a newly adopted or foster care child may be taken only with the employer's approval

c. To care for an immediate family member (spouse, child or parent, but not a parent-in-law) with a serious health condition

- Certification of "serious health condition" may be required
- Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member
- Does not include parent-in-law
- For a child, each parent has a 12-workweek entitlement
- May not use sick leave

a. For own "serious health condition"

- May use sick, annual, straight compensatory leave
- Employer may force use of leave
- Intermittent/reduced schedule leave may be taken when medically necessary
- Certification of the condition may be required
- Employee may choose to use accrued time and one-half compensatory leave. If so, it must be granted and does not deduct from the 12-week entitlement.

5. What are some important definitions for FMLA purposes?

a) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involve continuing treatment by (or under the supervision of) a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- any absences to receive multiple treatments (including any period of recovery from them) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

- b) Medical certification - An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least 15 calendar days to obtain the medical certification.
- c) Immediate family member - An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term parent does not include a parent-in-law. The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA).
- d) Spouse - Someone who is considered a spouse by the state in which that person resides.
- e) Parent - May be a natural parent or one who stood in loco parentis. That is, the person must have stood in the place of the parent and must have given financial support and was responsible for care.

**Questions concerning FMLA should be directed to
YOUR Human Resources Office!**